

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	ADMINISTRATIVE
)	ORDER ON CONSENT
Mid City Plating Company, Inc.)	
921 E. Charles St.)	DOCKET NO.
Muncie, IN 47305)	
)	
RESPONDENT)	Proceeding under Section 3013(a) of the
)	Resource Conservation and Recovery Act,
EPA ID No.: IND006049456)	as amended, 42 U.S.C. § 6934(a)
)	

RCRA SECTION 3013(a) ADMINISTRATIVE ORDER ON CONSENT

TABLE OF CONTENTS

I.	Jurisdiction	1
II.	Parties Bound	1
III.	Statement of Purpose	2
IV.	Findings of Fact	2
V.	Determinations and Conclusions of Law	5
VI.	Order	6
VII.	Additional Work	7
VIII.	Minimum Qualifications for Personnel	7
IX.	Submissions/EPA Review	7
X.	Quality Assurance/Quality Control	10
XI.	Project Coordinator	11
XII.	Sampling and Data/Document Availability	11
XIII.	On-site and Off-site Access	12
XIV.	Record Preservation	12
XV.	Information Submitted to EPA	13
XVI.	Delay in Performance/Stipulated Penalties	13
XVII.	Dispute Resolution	15
XVIII.	Force Majeure	15
XIX.	Reservation of Rights	16
XX.	Other Applicable Laws	17
XXI.	Other Claims	17
XXII.	Subsequent Modification of Order	18
XXIII.	Severability	18
XXIV.	Termination and Satisfaction	18
XXV.	Survivability/Permit Integration	19
XXVI.	Attorneys' Fees and Costs	19
XXVII.	Effective Date	20

RCRA SECTION 3013(a) ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

1. This Consent Order is issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA" or "Agency") by Section 3013(a) of the Resource Conservation and Recovery Act, ("RCRA" or "the Act"), as amended, 42 U.S.C. § 6934(a). Complainant is the Director, Land and Chemicals Division, EPA Region 5. The authority to enter into this Consent Order has been duly delegated to the Regional Administrators, and further delegated to the Director, Land and Chemicals Division, EPA Region 5.

2. This Consent Order is issued to Mid City Plating Company, Inc., ("Mid City Plating" or "Respondent"), a corporation doing business in the State of Indiana, relating to Mid City Plating's Facility ("Facility"). Respondent consents to and agrees not to contest EPA's authority to issue this Consent Order and to enforce its terms. Further, Respondent will not contest EPA's authority to: compel compliance with this Consent Order in any subsequent enforcement proceedings; require Respondent's full or interim compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order; provided, however, that Respondent retains any and all rights it may have to dispute the merits of any such claims.

3. This Consent Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by the Respondent and the public at EPA's Regional Office at 77 W. Jackson Blvd., Chicago, IL.

4. On January 31, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), EPA granted the Indiana Department of Environmental Management (IDEM) the authorization to operate a hazardous waste program in lieu of the federal program [Federal Register /Vol. 51, No. 21, January 31, 1986]. Under RCRA, whether or not a State has been authorized to operate a hazardous waste program, EPA retains its authority under Section 3013(a) of the Act.

II. PARTIES BOUND

5. The provisions of this Consent Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.

6. No change in ownership, corporate, or partnership status relating to the Facility described in this Consent Order will in any way alter the status or responsibility of Respondent under this Consent Order. Any conveyance by Respondent of title, easement, or other interest in the Facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Consent Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Consent Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

7. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with the terms of this Consent Order.

8. Any documents transferring ownership and/or operations of the Facility described herein from Respondent to a successor-in-interest shall include written notice of this Consent Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the Facility, provide written notice of this Consent Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

III. STATEMENT OF PURPOSE

9. This Order is issued to Respondent to address EPA's concerns that hazardous wastes have been released to the environment from on-site locations that may present a substantial hazard to human health and/or the environment and requires Respondent to implement sampling, analysis, monitoring and reporting at the Facility. In entering into this Order, the mutual objectives of EPA and Respondent are the protection of human health and the environment through Respondent's implementation of sampling, analysis, monitoring and reporting at the Facility. In meeting these objectives, Respondent shall prepare and submit for approval to EPA a sampling and analysis workplan ("Workplan") to perform monitoring, testing, analysis, and reporting of soil and groundwater samples in order to fully determine the nature and extent of the presence and/or release of hazardous waste, hazardous waste constituents, and/or Constituents of Concern ("COCs"), which are reasonably likely to be found in the environment at the Facility. COCs shall be specified in the Workplan. After EPA approval of the Workplan, Respondent must implement the Workplan and any subsequent modifications to it made by EPA, as needed.

IV. FINDINGS OF FACT

10. The RCRA Corrective Action program has created the 2020 Corrective Action Universe consisting of 3,779 facilities expected to need corrective action.

11. Respondent's Facility comes within the 2020 Corrective Action Universe.

12. Respondent's Facility consists of a 120,000 square foot zinc electroplating facility at 921 E. Charles Street, Muncie, Indiana.

13. Approximately 80,000 sq. ft. of the Facility is under roof with a concrete floor, and the majority of the remaining area around the building is paved or concrete-covered.

14. Small grassy areas are located on the east side of the Facility and in a small central courtyard located between buildings.
15. An open storm water reservoir is located on the East side of the Facility.
16. The Facility is located in a mixed residential/industrial area. To the north of the Facility is Society of St. Vincent de Paul charitable organization; to the west are partially vacant residential properties; to the south are a rail spur and a printing facility; and to the east is a partially vacant residential area.
17. Operations at the Facility began in approximately 1966.
18. Respondent submitted an initial notification of hazardous waste activities in 1980, submitted a notification as a large quantity hazardous waste generator in 1990, and reported as a conditionally exempt small quantity generator in 2010.
19. Historically, Respondent conducted zinc electroplating operations, using five plating lines, which generated cyanide and sludge related wastes.
20. Respondent currently operates only two of its five plating lines for zinc electroplating on steel and generates F006 filter cake and F008 plating bath sludge in connection with operations.
21. The plating lines are connected to the Facility's waste water treatment unit system.
22. In connection with historical and current operations, Respondent previously and/or currently generated or stored D001 (naphtha) waste, D003 (reactive) waste, D007 (chromium) waste, F006 sludge, waste oil, F008 waste, F009 waste, P106 (sodium cyanide) waste, P121 (zinc cyanide) waste, D002 (corrosive) waste, and F007 waste.
23. The Indiana Department of Environmental Management (IDEM) and EPA performed inspections of the Facility in December 1992 (IDEM), June 2010 (EPA), September 2011 (EPA), and September 2013 (EPA).
24. The inspections listed in Paragraph 23, above, documented the presence of and/or releases of hazardous wastes and hazardous substances in the following locations at the Facility:
 - a. In an area of the Facility called the "Old Chrome Shop" area where Respondent stored F008 (cyanide), D001 (naphtha), D003 (reactive), and D007 (chromium) wastes;
 - b. In numerous locations on the concrete floor and deteriorating concrete/ground surface throughout the Facility;

- b. In the hazardous waste storage containment pits under the plating lines with no secondary containment or spill controls in place;
- c. In numerous containers of various sizes throughout the Facility;
- d. In and next to a 20 cubic yard F006 hazardous waste roll-off container located outside the Facility;
- e. In the hazardous waste storage containment pits under the Barrel, Hanson, and Jessup plating lines; and
- f. In the waste water treatment trenches from the Barrel, Hanson, E-Coat and Jessup plating lines.

25. The presence of and/or releases of hazardous wastes and hazardous substances at the Facility identified in Paragraph 24, above, may result in a release of hazardous wastes and hazardous substances into the environment causing soil contamination, ground water contamination, and/or soil vapor intrusion due to the storage locations of the hazardous wastes or hazardous substances; the physical nature of the hazardous wastes and hazardous substances; and the physical condition of the building and containment systems.

26. Hazardous wastes and hazardous substances released into the environment at or from the Facility have the potential to migrate off-site and impact human or ecological receptors through ingesting contaminated groundwater; direct contact with contaminated soils; ingesting contaminated soils; or inhaling vapor from contaminated soils or groundwater.

27. Health effects to Facility employees, Facility visitors, trespassers, and wildlife that can result from inhalation, ingestion, and direct contact exposures to the hazardous wastes or hazardous substances generated or stored at the Facility, identified in the paragraphs above, include damage to liver, kidney, and the central nervous system; cancer in animals; and potential cancer in humans.

28. Exposure to cyanide in humans via inhalation results in effects on the central nervous system, such as headaches, dizziness, numbness, tremor, and loss of visual acuity.

29. Exposure to chromium in humans via inhalation results in various respiratory effects, including shortness of breath; coughing; wheezing; perforations and ulcerations of the septum; bronchitis; decreased pulmonary function; pneumonia; and an increased risk of lung cancer.

30. Exposure to naphtha via ingestion, inhalation or direct contact can cause damage to the liver, kidneys, and spleen; cause skin irritation or skin burns; result in blood changes such as leukopenia, aplastic anemia, or leukemia if benzene is present; cause cardiovascular and respiratory system effects; and cause central nervous system depression.

V. DETERMINATIONS AND CONCLUSIONS OF LAW

31. Respondent's Facility is a "facility or site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

32. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

33. Respondent is an "owner" and/or "operator" of the Facility within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

34. Section 1004(27) of RCRA, 42 U.S.C. § 6905(27) defines the term "solid waste" to mean "any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . ."

35. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term "hazardous waste" to mean:

a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may-

(A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

36. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the Facility, owned and/or operated by Respondent, is a facility at which hazardous waste is or has been stored, treated, or disposed of.

37. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that there may be a substantial hazard to human health or the environment due to the presence and/or release of hazardous wastes at or from the Facility.

38. EPA has further determined that Respondent, as owner and/or operator of the Facility, is the party responsible for conducting the actions ordered herein, which are necessary to ascertain the nature and extent of the hazard to human health or the environment.

VI. ORDER

39. Pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent consents to and is hereby ordered to perform the following actions in the manner and by the dates specified herein.

SAMPLING AND ANALYSIS WORKPLAN

40. Within thirty (30) days of receipt of this Consent Order, Respondent shall submit a Workplan to EPA for approval. The Workplan shall be used to determine the nature and extent of contamination for hazardous wastes and hazardous constituents likely to be present at Respondent's Facility. The Workplan shall include discussion about proposed soil sample locations and proposed locations for groundwater monitoring wells to be analyzed for the primary constituents likely to be present at the Facility, including volatile organic compounds (VOCs) and the following RCRA metals: arsenic, barium, cadmium, chromium, copper, cyanide, lead, nickel, selenium, and zinc.

41. The soil samples shall be collected to adequately determine the horizontal and vertical extent of contamination. The liquid samples shall be groundwater samples collected from monitoring wells. The samples shall be analyzed using EPA approved analytical methods to provide total concentrations of the requested analytes.

42. The Workplan shall, at a minimum, include:

- a. Objectives of the Workplan;
- b. A preliminary facility-specific Conceptual Site Model (CSM) for contaminants and exposure pathways;
- c. Field investigation procedures;
- d. Field sample collection procedures;
- e. Field measurements;
- f. Quality assurance/quality control ("QA/QC") procedures;
- g. Data management;
- h. Schedule;
- i. Sample analysis and testing; and
- j. Health and Safety Plan.

43. In accordance with the Workplan schedule, or within forty-five (45) days of completion of any additional work required pursuant to Paragraph 46, below, Respondent shall submit a final report to EPA addressing the activities proposed in the Workplan, and the requirements and goals outlined in Paragraphs 40, 41, and 42, above, including a summary of all actions taken to comply with this Order and recommendations for further actions, including any remediation options. The report will serve as a Current Conditions Report, summarizing the results of soil and groundwater investigations for work completed in accordance with the Workplan.

44. EPA acknowledges that Respondent may have completed some of the tasks required by this Consent Order and/or that Respondent may have available some of the information and data required by this Consent Order. Such previous work may be used to meet the requirements of this Consent Order upon submission to, and formal approval by, EPA.

45. All work undertaken pursuant to this Consent Order shall be developed and performed in accordance with RCRA and its implementing regulations, and all relevant EPA guidance documents, including those found at <http://www.epa.gov/epawaste/hazard/correctiveaction/resources/guidance/index.htm>. All attachments to this Consent Order are incorporated herein by reference.

VII. ADDITIONAL WORK

46. EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health or the environment which may be presented by the presence or release of hazardous wastes at or from the Facility. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a workplan for the additional work. EPA will specify the contents of such workplan. Such workplan shall be submitted by Respondent within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

VIII. MINIMUM QUALIFICATIONS FOR PERSONNEL

47. All work performed by the Respondent pursuant to this Consent Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out the terms of this Consent Order. Additionally, the Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Consent Order.

IX. SUBMISSIONS/EPA REVIEW

48. EPA will review Respondent's Workplan, and any other documents submitted pursuant to this Consent Order ("submissions"), with the exception of progress reports, and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the submission. Such disapproval shall not be subject to the dispute resolution procedures of Section XVII., below.

49. Within thirty (30) calendar days of receipt of EPA's comments on the submission, Respondent shall submit to EPA for approval a revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a revised submission. In the event that EPA disapproves the revised submission, Respondent may invoke the dispute resolution procedures of Section XVII., below. Otherwise, EPA reserves the right to revise such submission and seek to recover from Respondent the costs thereof, in accordance with any rights that it may have under RCRA, CERCLA and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

50. Within thirty (30) days following EPA's written approval of a submission or portion thereof, Respondent shall implement such approved document or portion.

51. Upon disapproval by EPA of a revised submission, and in the event Respondent does not invoke the dispute resolution procedures of Section XVII., below, Respondent may submit to EPA for approval a subsequent revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a subsequent revised submission.

52. In the event EPA and Respondent cannot resolve issues relating to EPA's comments and EPA disapproves of any subsequent revised submission, Respondent may invoke the dispute resolution procedures of Section XVII., below. Otherwise, EPA reserves the right to revise such submission and to seek to recover from Respondent the costs of revising the subsequent submission in accordance with RCRA, CERCLA and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

53. Respondent shall provide EPA with quarterly progress reports if the site work extends beyond a three-month period demonstrating that the activities approved under this Consent Order are being carried out. The first such report shall be submitted within three months after the effective date of this Consent Order. These progress reports will summarize all activities to date. This requirement shall continue throughout the period this Consent Order is effective. These quarterly progress reports shall be due on the fifteenth (15th) day of the month following the end of the quarter.

54. Two (2) copies (one (1) hard copy, double-sided if possible, and one (1) electronic copy) of all submissions (including revised submissions) required to be submitted by this Consent Order shall be delivered to the EPA Project Coordinator designated pursuant to Section XI., Project Coordinator, below.

55. EPA shall endeavor to timely approve or disapprove any deliverable submitted by Respondent for approval pursuant to this Consent Order. Nothing in this paragraph shall be construed to confer any enforceable rights upon Respondent, nor shall any failure to comply with the provisions of this paragraph be subject to the dispute resolution provisions set forth in Section XVII., below.

56. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent as follows:

- a. All documents to be submitted to EPA shall be sent to:

Joseph Kelly, Corrective Action Project Manager
U.S. Environmental Protection Agency
Region 5 (LU-9J)
77 W. Jackson Blvd.
Chicago, IL 60604

- b. Documents to be submitted to Respondent shall be sent to:

Mid City Plating Company, Inc.
c/o David L. Guevara
Taft Stettinius & Hollister LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204

57. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a duly authorized representative of Respondent. A person is a "duly authorized representative" only if: (a) the authorization is made in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the Project Coordinator designated by EPA pursuant to Section XI., Project Coordinator, of this Consent Order.

58. The certification required by Paragraph 57 above, shall be in the following form:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate

the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: _____
Name: _____
Title: _____

X. QUALITY ASSURANCE/QUALITY CONTROL

59. Respondent shall follow EPA guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan (QAPP) for all sampling and analysis conducted under this Consent Order. Workplans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved workplans must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.

60. The name, address, telephone number and contact person of each analytical laboratory Respondent proposes to use must be specified in the applicable workplan.

61. All workplans required under this Consent Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

62. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the work plan. EPA may reject any data that does not meet the requirements of the approved work plan or EPA analytical methods and may require resampling and additional analysis.

63. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required.

XI. PROJECT COORDINATOR

64. EPA hereby designates as its Project Coordinator:

Joseph Kelly, Corrective Action Project Manager
U.S. Environmental Protection Agency
Region 5 (LU-9J)
77 W. Jackson Blvd.
Chicago, IL 60604

65. Within ten (10) calendar days of Respondent's receipt of this Consent Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, and telephone number in writing to EPA.

66. Each Project Coordinator shall, on behalf of the party that designated him/her, oversee the implementation of this Consent Order and function as the principal project contact.

67. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change in Project Coordinator.

XII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

68. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, Respondent pursuant to the requirements of this Consent Order and the Attachments appended hereto and incorporated herein.

69. Respondent shall notify EPA, in writing, at least fourteen (14) calendar days in advance of engaging in any field activities at the Facility conducted pursuant to this Consent Order. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, EPA will allow Respondent or its authorized representatives to take split and/or duplicate samples of any samples collected by EPA under this Consent Order, provided that such sampling shall not delay EPA's proposed sampling activities. Upon request, Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, the Respondent pursuant to this Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

XIII. ON-SITE AND OFF-SITE ACCESS

70. Respondent shall provide access at all reasonable times to the Facility and to all records and documentation relating to conditions at the Facility and the activities conducted pursuant to this Consent Order to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the Facility in order to conduct activities which EPA determines necessary.

71. To the extent that activities required by this Consent Order, or by any approved workplans prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts, as used in this paragraph, shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.

72. Nothing in this Consent Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including, but not limited to, RCRA and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

XIV. RECORD PRESERVATION

73. Respondent shall retain, during the pendency of this Consent Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Consent Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the caption, docket number and date of issuance of this Consent Order and shall be addressed to EPA's Project Coordinator, as follows:

Joseph Kelly, Corrective Action Project Manager
U.S. Environmental Protection Agency
Region 5 (LU-9J)
77 W. Jackson Blvd.
Chicago, IL 60604

Additionally, Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five (5) year period at the written request of EPA.

XV. INFORMATION SUBMITTED TO EPA

74. Respondent may assert a business confidentiality claim in the manner described in 40 CFR § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Consent Order. In accordance with 40 CFR § 2.204(e)(4), any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 CFR Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

75. In the event that Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall identify the document, the privilege claimed and the basis therefore in writing. For the purposes of this Consent Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure and/or any applicable case law. EPA may dispute any such claim of privilege pursuant to the dispute resolution provisions set forth in Section XVII., below.

XVI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

76. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XVIII., Force Majeure, in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA.

77. Compliance by Respondent shall include commencement or completion, as deemed appropriate by EPA, of any activity, plan, study or report required by this Consent Order, and in the manner required by this Consent Order and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

- a. For any failure to commence, perform or complete work as prescribed in this Consent Order: \$3,000 per day for one to seven days or part thereof of noncompliance, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter;
- b. For any failure to submit any draft or final workplans, plans, or reports as required by this Consent Order: \$3,000 per day for one to seven days or part thereof of noncompliance, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter; and

- c. For any failure to submit other deliverables as required by this Consent Order: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$2,000 per day for each day of noncompliance, or part thereof, thereafter.

78. All stipulated penalties shall begin to accrue the first day that a violation occurs, or the first day after the date that complete performance is due, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

79. All stipulated penalties owed to EPA under this section shall be due within thirty (30) calendar days of receipt of a demand for payment, unless Respondent invokes the dispute resolution procedures under Section XVII., below. Such demand for payment shall describe the noncompliance and shall indicate the amount of stipulated penalties due.

80. All stipulated penalty payments may be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

U.S. Department of the Treasury
Attention: EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673

All payments shall reference the Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5 (E-19J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

81. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XVII., Dispute Resolution. Stipulated penalties shall continue to accrue, but are not required to be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within twenty-one (21) calendar days of receipt of EPA's written decision as to said dispute, any outstanding penalty payment in the manner described above in Paragraph 80 of this Section.

82. Neither the filing of a petition to resolve a dispute nor the payment of stipulated penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

83. The assessment of stipulated penalties set forth in this section shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.

XVII. DISPUTE RESOLUTION

84. If a dispute arises under this Consent Order, the procedures of this section shall apply. The Parties shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level.

85. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefore, within fourteen (14) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within the twenty-eight (28) calendar day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute. Said written decision shall state the basis and rationale for the decision.

86. Except as provided in Paragraphs 84 and 85 above, the existence of a dispute, as defined in this section, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

87. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall constitute final agency action giving rise to any right to judicial review.

XVIII. FORCE MAJEURE

88. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a *force majeure*. Respondent shall have the burden of proving such a *force majeure*. A *force majeure* is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. A *force majeure* does not include: increased costs of performance; changed economic circumstances; failure to obtain federal, State or local permits; reasonably foreseeable weather conditions; or weather conditions which could have been overcome by due diligence.

89. Respondent shall notify EPA, in writing, within ten (10) calendar days after it becomes or should have become aware of any event which Respondent claims constitutes a *force majeure*. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated time table for implementation of these measures. Failure to comply with the notice provision of this paragraph shall constitute a waiver of Respondent's right to assert a *force majeure* claim with respect to such event. If, in EPA's sole and unreviewable discretion, EPA determines that the failure to give notice was not prejudicial to EPA's efforts to protect human health or the environment, Respondent's failure to give notice shall not constitute a waiver. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

90. If EPA determines that the failure to comply or delay has been or will be caused by a *force majeure*, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such *force majeure*. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXII., Subsequent Modification of Order. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are unavoidably affected by the delay. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a *force majeure*, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XVII., Dispute Resolution.

XIX. RESERVATION OF RIGHTS

91. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Consent Order, to require that Respondent correct and/or re-perform any work disapproved by EPA, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, workplans, or in this Consent Order, consistent with the objectives of this Consent Order.

92. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order. This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), or any other statutory, regulatory, or common law enforcement authority of the United States.

93. EPA reserves the right to perform any portion of the work required herein or any additional monitoring, sampling, analysis, or reporting it deems necessary to protect public

health or welfare or the environment. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the EPA in connection with any such actions, pursuant to any right it may have under applicable law.

94. EPA reserves whatever rights it may have under any environmental law or authority, or in equity, to seek to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Consent Order.

XX. OTHER APPLICABLE LAWS

95. All actions required to be taken by Respondent pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

96. Compliance by Respondent with the terms of this Consent Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

97. This Consent Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Consent Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Consent Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XXI. OTHER CLAIMS

98. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the Facility.

99. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act, or omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Consent Order.

XXII. SUBSEQUENT MODIFICATION OF ORDER

100. Except as provided in Paragraph 102 of this section, the provisions of this Consent Order may be amended only by mutual agreement of EPA and Respondent. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which it is signed by EPA, and shall be incorporated into this Consent Order. Any oral agreement between EPA and Respondent, the purpose of which is to modify this Consent Order to address exigent circumstances, and which is subsequently ratified in writing by EPA and Respondent, shall have as its effective date the date of such oral agreement.

101. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon written approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XVI., Delay in Performance/Stipulated Penalties.

102. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by written agreement of the Project Coordinators. Such modifications shall have as an effective date the date on which the agreement is signed by the EPA Project Coordinator.

103. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent shall be construed as relieving Respondent of its obligation to obtain written approval, if and when required by this Consent Order.

XXIII. SEVERABILITY

104. If any provision or authority of this Consent Order, or the application of this Consent Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Consent Order shall not be affected thereby and shall remain in full force.

XXIV. TERMINATION AND SATISFACTION

105. The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed. Such notice shall not be unreasonably withheld. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to,

Section XIV., Record Preservation; Section XIX, Reservation of Rights; Section XX., Other Applicable Laws; and Section XXI., Other Claims.

XXV. SURVIVABILITY/PERMIT INTEGRATION

106. If, subsequent to the issuance of this Consent Order, a RCRA permit or other order is issued to the Facility, the requirements of this Consent Order will be incorporated by reference into that permit or order.

107. Any requirements of this Consent Order shall not terminate upon the issuance of a permit unless all relevant Consent Order requirements are expressly replaced by the requirements in the permit or all provisions of this Consent Order have been fully complied with to EPA's Satisfaction in accordance with Section XIX, Reservation of Rights, of this Consent Order.

XXVI. ATTORNEYS' FEES AND COSTS

108. Except as otherwise provided herein, Respondent shall bear its own costs and attorneys' fees.

XXVII. EFFECTIVE DATE

109. The effective date of this Consent Order shall be the date on which Respondent receives a true and correct copy of the fully executed Consent Order.

IT IS SO AGREED AND ORDERED:

DATE: _____

BY: _____

Margaret M. Guerriero
Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5

FOR COMPLAINANT

DATE: _____

BY: _____

Rodney Muzzarelli
President
Mid City Plating Company, Inc.

FOR RESPONDENT